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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/726,820	12/02/2003	Bob Duncan	9276-3	4109

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EXAMINER

D ADAMO, STEPHEN D

ART UNIT	PAPER NUMBER
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3636

DATE MAILED: 06/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/726,820	Applicant(s) DUNCAN ET AL.	
	Examiner Stephen D'Adamo	Art Unit 3636	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5-14 and 16-33 is/are pending in the application.
- 4a) Of the above claim(s) 16-33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 December 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. This application contains claims 16-33 drawn to an invention nonelected without traverse in the response filed September 13, 2004. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the “deck fabric sheet attached to the underside of the backrest/deck portion” must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled “Replacement Sheet” in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified

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and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-15 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 1-15, the claims recite "a deck fabric sheet" which is confusing and unclear since there is no limitation mentioned in the disclosure. However, in review of the invention, it is understood that the deck fabric sheet is disclosed as the deck panel 84 of the upholstery piece. Therefore, the terminology should be consistent to the disclosure to avoid a lack of definiteness. Clarification in the claims is required.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haltner (5,26,388) in view of Tell (5,320,407) and St. Thomas (5,681,090).

Haltner discloses a sofa including a frame having a generally horizontal deck section including a top portion and an underlying bottom portion. The sofa also includes a

backrest section, extending upwardly from the deck section. Further, Haltner teaches of a furniture cover that covers the deck and backrest portions and underlies the bottom section of the deck portion. Moreover, "the article of furniture is positioned inside of the stretchable tubular fabric sidewall with the stretchable fabric conforming to the shape of the furniture" (col.5, lines 36-39). Haltner fails to teach of a leather cover or a cover made from different materials. However, Tell teaches of an adjustable furniture slipcover preferably made from 100% cotton. Tell further discloses, "leather or plastic could be used for the panel materials. All the panels are preferably made of the same material, but alternatively different panels could be made of different materials or contain inserts of different materials" (col.4, lines 54-57). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the material of Haltner with a leather cover and a dust cover portion formed of a different material, as generally taught by Tell, for providing protection to the upholstery cover in a variety of different locations. For example, the top portion is used for sitting, therefore, it would be obvious to include a different material that prevents from wear and tear and stains.

Whereas, the underlying surface of the sofa does not need the same material since it is used for a different purpose.

Haltner further discloses that the upholstery piece is closed and tightened with a drawstring on the side panel of the sofa. Haltner fails to expressly disclose the use of a zipper. Yet, St. Thomas teaches of "a zipper [that] allows the cover fabric to be removed for cleaning, or replacement, should a new color or design of cover fabric be desired" (col.3, lines 28-30). It would have been obvious to one having ordinary skill in the art at

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the time the invention was made to modify the closure of Haltner with a zipper instead of a drawstring, for a more secure closure means. Also, whether the upholstery piece includes a drawstring or a zipper is considered a matter of design choice since both are old and well known in the art.

Claims 1, 2, 4-6 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over St. Thomas (5,681,090) in view of Tell (5,320,407).

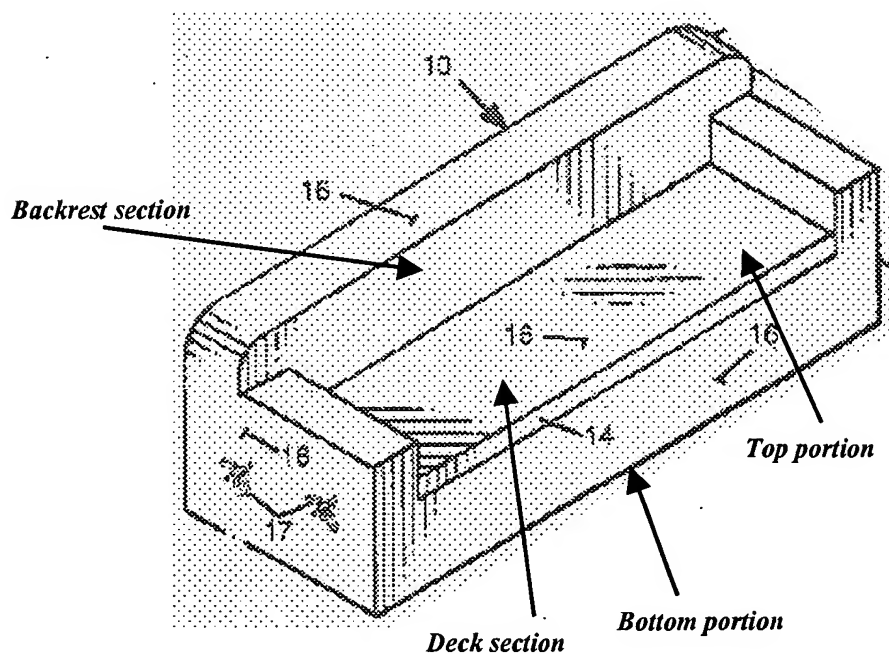
St. Thomas discloses a couch 10. The couch, as seen in Figure 1, includes a frame having a horizontal deck section and a generally upright backrest section attached to and extending upwardly from the deck section. The deck section also includes a top portion and an underlying bottom portion, characteristics found on all pieces of furniture (seen below). An integrated upholstery piece 16 covers the backrest section and underlies the bottom portion of the deck section, as seen in Figure 3. Moreover, St. Thomas teaches of "a zipper [that] allows the cover fabric to be removed for cleaning, or replacement, should a new color or design of cover fabric be desired" (col.3, lines 28-30). Moreover, the upholstery piece is attached to the frame of the sofa without staples, instead, the frame is attached with strips 17. Yet, St. Thomas teaches of an upholstery cover made from acrylic. St. Thomas fails to teach of a leather cover or a cover made from different materials. However, Tell teaches of an adjustable furniture slipcover preferably made from 100% cotton. Tell further discloses, "leather or plastic could be used for the panel materials. All the panels are preferably made of the same material, but alternatively different panels could be made of different materials or contain inserts of different materials" (col.4, lines 54-57). It would have been obvious to one having ordinary skill

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in the art at the time the invention was made to modify the material of St. Thomas with a leather cover and a dust cover portion formed of a different material, as generally taught by Tell, for providing protection to the upholstery cover in a variety of different locations. For example, the top portion is used for sitting, therefore, it would be obvious to include a different material that prevents from wear and tear and stains. Whereas, the underlying surface of the sofa does not need the same material since it is used for a different purpose.

As understood, regarding claim 8, the upholstery fabric 16 includes a piece of fabric that is attached to the underside of the sofa or backrest/deck portion, seen in Figure 3.

Moreover, a cloth liner 15 is also used on the underside of the entire upholstery piece 16.



Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over St. Thomas (5,681,090) in view of Tell (5,320,407) and in further view of Kelley (3,589,770).

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St. Thomas discloses a couch 10. The couch, as seen in Figure 1, includes a frame having a horizontal deck section and a generally upright backrest section attached to and extending upwardly from the deck section. The deck section also includes a top portion and an underlying bottom portion, characteristics found on all pieces of furniture (seen below). An integrated upholstery piece 16 covers the backrest section and underlies the bottom portion of the deck section, as seen in Figure 3. Moreover, St. Thomas teaches of “a zipper [that] allows the cover fabric to be removed for cleaning, or replacement, should a new color or design of cover fabric be desired” (col.3, lines 28-30). Moreover, the upholstery piece is attached to the frame of the sofa without staples, instead, the frame is attached with strips 17. Tell teaches of that different panels could be made of different materials or contain inserts of different materials. Yet, neither St. Thomas nor Tell expressly disclose lateral panels with windows to permit access to recesses in the lateral surfaces of the frame. However, Kelley teaches of a “furniture with changeable covers” comprising a frame with recesses 32 in the lateral surfaces of the frame. Moreover, the changeable slipcover 12 also includes windows 50 that overlie and allow access to the recesses 32 on the lateral surfaces. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the upholstery cover of St. Thomas with windows in the cover that align with recesses in the furniture frame, as taught by Kelley, for providing a different means of securing a removable slipcover to a sofa frame.

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Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over St. Thomas (5,691,090) in view of Tell (5,320,407) and in further view of Carson (3,695,690) and Gaylord et al. (6,293,624).

St. Thomas discloses a couch 10. The couch, as seen in Figure 1, includes a frame having a horizontal deck section and a generally upright backrest section attached to and extending upwardly from the deck section. The deck section also includes a top portion and an underlying bottom portion, characteristics found on all pieces of furniture (seen below). An integrated upholstery piece 16 covers the backrest section and underlies the bottom portion of the deck section, as seen in Figure 3. Moreover, a cloth liner 15 is also used on the underside of the entire upholstery piece 16. Tell teaches of that different panels could be made of different materials or contain inserts of different materials. However, neither St. Thomas nor Tell disclose laterally extending pockets, laterally extending slots and elongate slats received in the slots. Yet, Carson teaches of a furniture covering arrangement with laterally extending slots 86 and elongate slats 86 received therein in the top portion of the deck section. Gaylord further teaches of pockets for holding rods that are received in slots for attaching a stretchable cover to the deck section of a seat. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the drawstring or attachment means of St. Thomas with pockets formed on the cover, as taught by Gaylord, and elongate slats received in elongate slots, as taught by Carson, for providing a stronger and more secure attachment means of the cover to the frame.

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Beyer discloses a “method and apparatus for attaching a trim cover to a seat frame” comprising a frame having a generally horizontal deck section including a top portion and an underlying p a

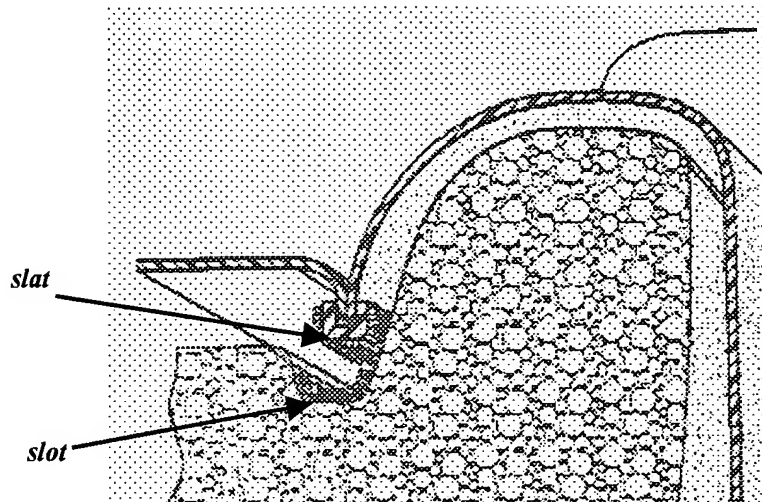
Claims 11, 12, 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carson (3,695,690) in view of Heuston (3,179,469).

Carson discloses a furniture covering arrangement comprising a frame having a generally horizontal deck section 28, including a top portion, and a generally upright backrest section 23 attached to and extending upwardly from the deck section. Carson also teaches of a deck fabric sheet and a slat 86 attached to the fabric sheet 91 and being received in the front slot 87 of the deck section top portion. Furthermore, the upholstery piece covers the frame and is attached to the upholstery piece. However, Carson fails to expressly disclose a pair of slats attached to the top portion of the deck section. Yet, Heuston teaches of an elastomer furniture support including a deck section 22 having a front and rear slot or groove 12. A pair of slats 30 are received within the front and rear slots. “To assemble the platform 22 on the frame, the platform is stretched and the smaller end 30 of each hook 26 is placed in the groove 12 flat against the interior wall 16 of the groove” (col.1, lines 66-69). Moreover, as seen in Figure 3, each groove or slot are formed such that their upper ends flare away from one another. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the furniture cover arrangement of Carson with front and rear slats, as taught by Heuston, for providing a stretched upholstery cover on the deck portion of the furniture.

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Claims 11, 12, 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beyer (5,826,939) in view of Heuston (3,179,469).

Beyer discloses a “method and apparatus for attaching a trim cover to a seat frame: comprising a frame having a generally horizontal deck section 18, including a top portion, and a generally upright backrest section (not shown) attached to and extending upwardly from the deck section. Beyer also teaches of a deck trim cover 46 and a slat (see below) attached to the trim cover 46 and being received in the front slot of the deck section top portion. Furthermore, the upholstery piece covers the frame and is attached to the upholstery piece. However, Carson fails to expressly disclose a pair of slats attached to the top portion of the deck section. Yet, Heuston teaches of an elastomer furniture support including a deck section 22 having a front and rear slot or groove 12. A pair of slats 30 are received within the front and rear slots. “To assemble the platform 22 on the frame, the platform is stretched and the smaller end 30 of each hook 26 is placed in the groove 12 flat against the interior wall 16 of the groove” (col.1, lines 66-69). Moreover, as seen in Figure 3, each groove or slot are formed such that their upper ends flare away from one another. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the furniture trim cover arrangement of Beyer with front and rear slats, as taught by Heuston, for providing a stretched upholstery cover on the deck portion of the furniture.



Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Beyer (5,826,939) in view of Heuston (3,179,469) and in further view of Gaylord et al. (6,293,624).

Beyer discloses a “method and apparatus for attaching a trim cover to a seat frame: comprising a frame having a generally horizontal deck section 18, including a top portion, and a generally upright backrest section (not shown) attached to and extending upwardly from the deck section. Beyer also teaches of a deck trim cover 46 and a slat (seen above) attached to the trim cover 46 and being received in the front slot of the deck section top portion. Furthermore, the upholstery piece covers the frame and is attached to the upholstery piece. Heuston further teaches of a pair of slats in front and rear slots for stretching the deck section cover across the top portion. However, neither Beyer nor Heuston disclose laterally extending pockets where each slat is received therein. Yet, Gaylord discloses a sling chair with a cover 14 stretched across the top portion of a deck section similarly to that disclosed by Heuston. Gaylord teaches of a rod 44 inserted into a pocket 36. The arrangement is then inserted into the slot 40 to keep the seat cover in tension. It would have been obvious to modify the trim cover of Beyer and Heuston with

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a pocket to receive the slat of Heuston, as taught by Gaylord, for reducing the complexity of assembly of the trim cover to the seat frame.

Response to Arguments

5. Applicant's arguments filed 17 March 2005 have been fully considered but they are not persuasive.

In response to applicant's argument that the combination of St. Thomas and Tell fail to teach of different materials should be selected to provide different functions of the upholstery, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). Tell specifically teaches that different materials can be used. Furthermore, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963). Therefore, Tell's teaching of using different materials for different panels is capable of serving different functions to the upholstery.

In response to applicant's argument that the combination of Carson or Beyer in view of Heuston fail to teach of a slat being received in a slot in the deck section of the sofa frame, the test for obviousness is not whether the features of a secondary reference may be bodily

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incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). Heuston's elastomer platform could be bodily incorporated into the furniture of either Carson or Beyer.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Whittles (GB 2150021) and Schimmel et al. (DE 3513076) both show various features of the claimed invention.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen D'Adamo whose telephone number is 571-272-6857. The examiner can normally be reached on Monday-Friday 6:00-2:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Pete Cuomo can be reached on 571-272-6856. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

sd
May 31, 2005


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